IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7205 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

A'BAD MUNICIPAL CORPORATION

Versus

PURSHOTTAMBHAI N. PRAJAPATI

Appearance:

1. Special Civil Application No. 7205 of 1995

MR MR ANAND for Petitioner No. 1

MR DIPAK C RAVAL for Petitioner No. 1

HL PATEL ADVOCATES for Respondent No. 1

MR RK MISHRA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 03/03/2004

ORAL JUDGEMENT

Heard learned advocate Mr.D.C.Rawal on behalf of

the petitioner Corporation and learned advcoate Mr.Asim Pandya for respondent workman.

In the present petition, the petitioner Corporation has challenged the award passed by the labour court, Ahmedabad in Reference No.794 / 1990 [Original Reference No.1086 / 1984] dated 26th April, 1995, wherein the labour court has granted reinstatement with continuity of service with full backwages of the interim period. It is relevant to note that at the time of issuing Rule on 19th March, 1996, this Court has directed the Corporation that the respondent workman shall be relegated to the original position which he was holding at the time of his termination with all benefits from the date of publication of the award upto the date he is put back on job on the basis that his services had not been terminated. The relief of backwages granted by the 4th Labour Court, Ahmedabad by award dated 26th April, 1995 shall remain stayed. In pursuance of the order passed by this Court on 19th March, 1996, learned advocate Mr.D.C. Rawal submits that the respondent workman has been reinstated in service by the Corporation from the date of award came into force by the Corporation and at present the workman is working with the Corporation.

Learned advocate Mr.D.C.Rawal mainly raised contentions about grant of full backwages of the interim period in favour of the respondent workman. He submitted that the workman undisputedly worked with the corporation merely for a period of eleven months only and his service was terminated on 14th October, 1983. He also submitted that according to the recommendations of the Standing Committee, the respondent workman was taken in service. It is also contended that actually there is no post of Garden Labourer. Learned advcoate Mr.Rawal pointed out that in place of workman, no new workman has been recruited. Post of workman has been created by the Municipal Commissioner and on that post, the respondent workman came to be appointed. Thereafter, on 15th September, 1982 as per the Resolution passed by the Standing Committee, in all five posts have been sanctioned for a period of one year and on that basis, workman remained continued only for a period of 11 months and thereafter, this period was not extended by the Standing Committee and ultimately by another resolution of the Standing Committee dated 28th September, 1983, three posts have been sanctioned, wherein Garden Labourer was not included and his tenure and / or period was not extended and therefore, service of the workman has been terminated by the Corporation. It is also contended that as such, no fresh recruitee has been appointed in place

of the respondent workman. Therefore, he submitted that the labour court has committed gross error in comparing another 22 persons who have been recruited by the Corporation in the post of Helper and therefore, the conclusion of the labour court that once 22 Helpers have been appointed by the Corporation, then why the workman should not have been appointed and on that basis, reinstatement has been ordered by the labour court. Learned advocate Mr.Rawal has also submitted that the labour court has committed gross error in granting full backwages in favour of the respondent workman.

Learned advocate Mr.Asim Pandya for the respondent workman has submitted that the labour court has rightly passed the award. Learned advocate Mr.Pandya has contended that it is not disputed between the parties that the workman has completed 11 months continuous service and thereby completed 240 days continuous service. That at the time of termination, Section 25-F has not been followed by the Corporation and therefore, the labour court has rightly set aside the termination order. It is, however, submitted that the labour court has rightly granted full backwages as the other side has not proved gainful employment of the respondent workman and the workman remained unemployed and therefore, the labour court has granted full backwages of the interim period. According to him, the labour court has not committed any error while passing the award impugned in the present petition.

However, learned advocate Mr.Asim Pandya, keeping in mind the facts and overall circumstances of the case, does not seriously press the aspect of grant of full backwages of the interim period as awarded by the labour court.

I have considered submissions made by the learned advocates for the respective parties. It is not disputed between the parties that the workman had worked only for a period of eleven months as daily rated workman with the Corporation in Zoo Department. Period of service of the workman was on the basis of the resolution passed by the Standing Committee but Standing Committee, thereafter, not extended the period of workman concerned and therefore, his services was terminated. There is no doubt that there is breach of Section 25-F of the I.D.Act and as a result thereof, the labour court has granted reinstatement in favour of the workman. The labour court, in its award, in para-9 has observed that after service of the workman has been terminated, the Corporation has recruited 22 Helpers in the Department.

The qualification of the Helper and the Garden Labourer is more or less same and therefore, the labour court was of the opinion that as to why, an opportunity has not been given to the workman concerned for being appointed on the post of Helper. The observations made by the labour court in para-9 are taken into consideration by this Court. According to my opinion, the workman was undisputedly worked in the post of Garden Labour. It is undoubted that in all 22 persons have been recruited by the Corporation on the post of Helper. There was no post available or found vacant of Gardener Helper, then, in such circumstances, to compare the case of the workman with said 22 persons, is, in my opinion, totally out side the scope of the reference. Therefore, there was no breach of Section 25-H of the I.D.Act as it was not recruitment or re-employment in the same category. Section 25-H will apply in case of same category, not to other category. The category of the workman is Garden Labourer and 22 persons recruited in the post of Helper. It may be that qualification may be same but that does not mean that the Corporation has committed any breach of Section 25-H of the I.D.Act, 1947. Therefore, observation made by the labour court on this aspect, seems contrary to the provisions of Section 25-H of the I.D.Act and it is a result of misreading of oral evidence of witness Shri Harshvardhan Girjashankar at Exh.16. Therefore, the observations made in para-9 seem to be contrary to the law because on other occasion also, the labour court has observed the same aspect that once the workman has completed service of 11 months and he having experience of Garden Labourer, then, at the time recruitment of 22 persons on the posts of Helper, the Corporation ought to have recruited the workman concerned on the post of Helper. However, in my opinion, this cannot be done by the Corporation because the Post of Helper and Garden Labourer are altogether different posts, requisiting different experience and qualification and different source of recruitment. Therefore, observations made by the labour court on this count, in my opinion, seems to be contrary to the law and therefore, the same require to be set aside.

The other aspects of the matter which require to be appreciated that termination of workman was on 14th October, 1983 and the matter has been referred for adjudication in the year 1984. The Reference remained pending before the labour court for a period of 11 years. The workman has deposed before the labour court that he remained unemployed and not gainfully employed. But the Corporation has not proved the gainful employment of the workman concerned but that does not mean, it was

sufficient to entitle the workman full backwages of the interim period. In such circumstances and in the facts of the Reference, the labour court ought to have considered the fact that there is no post of Garden Labourer available or found to be vacant where the workman can be reinstated in service. It is true that Section 25-F has not been followed and therefore, there is no doubt that it can be said to be technical legal breach committed by the employer, and in that case, the workman is entitled to reinstatement but to grant full backwage of the 11 years just against the service of 11 months with the corporation, would be on higher side inasmuch as it would be ultimate burden upon the public body because of the pendency of the reference before the labour court for more than 11 years. This aspect has not been properly appreciated by the labour court. Fact that cannot be ignored that the workman had merely worked for eleven months with the corporation and there is breach of Section 25-F of the I.D.Act and as a result thereof, the order of termination is found to be bad but grant of full backwages of the interim period on the ground that the other side has not proved gainful employment and the fact that the matter remained pending before the labour court for 11 years for no fault of either side, in such circumstances, the amount of full backwages as awarded by the labour court, in my opinion, that can be said to be burden on the public exchequer and therefore, workman is not awarded any backwages of the interim period without disturbing reinstatement granted in favour of the respondent workman as has been rightly awarded by the labour court, would meet the ends of justice between the parties. It requires to be observed that the workman has already been reinstated in service by the petitioner as per the direction issued by this Court.

In view of my aforesaid discussion and observations made above, the award in question passed by the labour court concerned, requires to be modified. It is, therefore, held that the labour court has rightly granted reinstatement with continuity of service, for that, the labour court has not committed any error and same does not warrant any interference but the labour court has committed gross error in granting full backwages of the interim period and therefore, that direction is required to be quashed and set aside.

Accordingly, present petition is partly allowed. Direction issued by the labour court granting full backwages of the interim period is hereby quashed and set aside without disturbing the order of reinstatement in favour of the workman with continuity of service. Award

in question stands modified accordingly.

Rule is made absolute to the extent indicated above with no order as to costs.

Date : 3.3.2004 [H.K.Rathod, J.]

#kailash#